

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

KENNETH WAYNE GERDES.

Plaintiff,

$$\mathbf{V}_i$$

COMMISSIONER OF THE
SOCIAL SECURITY
ADMINISTRATION,

Defendant.

Case No. CIV-23-075-JAR

OPINION AND ORDER

This matter comes before this Court on Plaintiff's Unopposed Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) (Docket Entry No. 26). Plaintiff contends this Court's Opinion and Order which granted Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) erroneously provided for the deduction of EAJA fees previously awarded from the award. Since Plaintiff's counsel is required to reimburse the amount to Plaintiff by Tenth Circuit authority, counsel contends the EAJA fees are essentially being deducted from her § 406 award twice.

Plaintiff's counsel is correct. Relief will be granted under Rule 60(b)(6) and this Court's prior Opinion and Order will be modified to reflect the correct amount.

IT IS THEREFORE ORDERED that Plaintiff's Unopposed Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) (Docket Entry No. 26) is hereby **GRANTED**. Accordingly, the final paragraph of this Opinion and Order entered November 7, 2024 (Docket Entry No. 25) is corrected to read as follows:

IT IS THEREFORE ORDERED that Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) filed by Lisa J. McNair, the attorney of record for Plaintiff (Docket Entry #22) is hereby **GRANTED**. Plaintiff's counsel is awarded fees in the amount of \$10,786.25. Defendant is directed to pay this fee directly to counsel from the amount of past due benefits withheld for that purpose. In addition, Plaintiff's counsel shall refund the smaller amount between any EAJA fees already awarded and the §

406(b) fees awarded in this decision to Plaintiff. Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 1st day of April, 2025.



JASON A. ROBERTSON
UNITED STATES MAGISTRATE JUDGE